

HOUSE BILL NO. 349

INTRODUCED BY A. OLSON, PARKER, KLOCK, GEBHARDT, MANGAN, MAEDJE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROVIDING THAT A PEACE OFFICER, THE STATE, AND A POLITICAL SUBDIVISION ARE IMMUNE FROM SUIT FOR ANY ACT OR OMISSION ARISING OUT OF THEIR ENFORCEMENT OR ADMINISTRATION OF REVISING STATUTES CONCERNING PUBLIC INTOXICATION AND STATUTES CONCERNING THE TREATMENT OF ALCOHOLISM; ELIMINATING THE REQUIREMENT THAT POLICE TAKE PERSONS INCAPACITATED BY ALCOHOL INTO PROTECTIVE CUSTODY; ELIMINATING THE PROHIBITION AGAINST MAKING A RECORD OF ARREST; AMENDING SECTIONS 53-24-107 AND 53-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-24-107, MCA, is amended to read:

"53-24-107. Public intoxication not a criminal offense. (1) A person who appears to be intoxicated ~~or incapacitated by alcohol in public commits no~~ does not commit a criminal offense solely by reason of being in ~~such an intoxicated~~ condition but may be detained by a peace officer for the person's own protection. A peace officer who detains a person who appears to be intoxicated ~~or incapacitated by alcohol in public~~ shall proceed in the manner ~~as provided by in~~ 53-24-303 AND SUBSECTION (3) OF THIS SECTION.

(2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person who appears to be intoxicated ~~or incapacitated by alcohol in jail~~ until the person is no longer creating a risk to ~~himself~~ self or others.

(3) A PEACE OFFICER, IN DETAINING THE PERSON, SHALL MAKE EVERY REASONABLE EFFORT TO PROTECT THE PERSON'S HEALTH AND SAFETY. THE PEACE OFFICER MAY TAKE REASONABLE STEPS FOR THE OFFICER'S OWN PROTECTION. AN ENTRY OR OTHER RECORD MAY NOT BE MADE TO INDICATE THAT THE PERSON DETAINED UNDER THIS SECTION HAS BEEN ARRESTED OR CHARGED WITH A CRIME.

~~(3)(4) A peace officer, acting within the scope of his authority under this chapter, shall not be personally liable for his actions~~ the state, and a political subdivision are immune from suit for an A GOOD FAITH act or omission arising out of the enforcement or administration of this chapter UNDER THIS SECTION ACTING WITHIN THE SCOPE OF THE OFFICER'S AUTHORITY UNDER THIS CHAPTER, IS NOT PERSONALLY LIABLE FOR THE OFFICER'S ACTIONS."

Section 2. Section 53-24-303, MCA, is amended to read:

"53-24-303. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) A person who appears to be intoxicated in a public place and to be in need of help may be assisted to the person's home, an approved private treatment facility, or other health CARE facility by the police, if the person consents to an offer for help.

(2) ~~A person who appears to be incapacitated by alcohol must be taken into protective custody by the police and must be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person, are taking the person into protective custody and shall make every reasonable effort to protect the person's health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate that the person taken into custody under this section has been arrested or charged with a crime. A peace officer, the state, and a political subdivision are immune from suit for an A GOOD FAITH act or omission arising out of the enforcement or administration of this chapter UNDER THIS SECTION ACTING WITHIN THE SCOPE OF THE OFFICER'S AUTHORITY UNDER THIS CHAPTER, IS NOT PERSONALLY LIABLE FOR THE OFFICER'S ACTIONS."~~

~~NEW SECTION. Section 3. Two-thirds vote required. Because [sections 1 and 2] limit government liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.~~

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

- END -